

ROYAL COURT
(Samedi Division)

16th November, 1994

226.

Before: The Bailiff, Single Judge.

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- Between: The Jersey New Waterworks Company Limited Representor
 - And: The Rate Assessment Committee of The Parish of Grouville First Respondent
 - And: The Rate Assessment Committee of The Parish of St. Helier Second Respondent
 - And: The Supervisory Committee comprising The Constables of St. Helier, St. John, St. Ouen, Trinity and St. Martin Third Respondent
 - And: The Supervisory Committee comprising The Constables of St. John, St. Ouen, St. Brelade St. Martin, Grouville, St. Mary, Trinity and St. Clement Fourth Respondent

Advocate W. J. Bailhache for the Representor.
 Advocate J. G. White for the First Respondent.
 Advocate C. R. de J. Renouf for the Second Respondent.
 Advocate N. F. Journeaux for the Third and Fourth Respondents.

Representor's Application for the costs of the proceedings.

JUDGMENT

THE BAILIFF: The discretion of the Bailiff as to costs is unfettered, but of course he has to exercise his rulings judicially, and I have been able to find some help from the case of Lipkin Gorman -v- Karpnale Ltd (1989) 1 WLR 1340 @ pp.1389-1390. That case is interesting because it upholds the usual rule that costs follow the event which has been the Jersey practice.

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The Jersey New Waterworks Company Limited succeeded in having the assessments of both Parishes set aside but not in obtaining a minimal assessment from the Court. However, the way the pleadings

were drawn did not ask for that. They asked clearly only for the setting aside of the unlawful assessment, which the Court did, and further of course, for a declaration that the activities and rulings of the Supervisory Committee were void, which again which the Court made.

The question of the way in which an assessment should be made in relation to agricultural land or land underwater occurred only in the particulars and I really cannot find that the fact that it was raised during the trial should in itself be a bar to the award of costs because, taken in relation to the main complaint that the assessment was unlawful, it is minimal and incidental. In any case, as Mr. Bailhache has rightly said, it is not for the Jersey New Waterworks Company to suggest the way in which the assessment should be made, it is for the assessment committees and for the supervisory committee to make the assessments and to judge the assessments, in the case of the supervisory committee, according to Law, neither of which was done.

The question therefore has to be asked: why did the representation have to be brought? After all, there had been other assessments in the other Parishes and these were not appealed. The straight answer which I give now to that question is the unlawful methods adopted by the assessment committees to assess the rating amount and those unlawful methods were upheld, unhappily, by the supervisory Committee.

So far as the supervisory committee itself is concerned, I am quite satisfied on the authority of Tett -v- States of Jersey Rent Control Tribunal (1972) JJ 2249 C.of.A., that the Royal Court has authority, if it thinks appropriate - and that would be the Bailiff of course - to award costs against the supervisory committee just as it awarded costs in the Tett case. I can see nothing improper in that and therefore the decisions in the English case of R. -v- Willesden Justices, ex p. Utley (1948) 1 KB 193 are not binding upon me; it cannot be binding, of course, in any case; it is not even of strong persuasive effect and I distinguish it on the ground of the Tett case.

So far as Article 8(4) of the Rating Law is concerned, that really is not a matter for me to take into account. What may happen after my order is a matter for the parties to settle amongst themselves. Again, I would have to have considerable argument advanced before me before I could interpret the Article in the way Mr. Journeaux or Mr. Renouf suggests. That is not a matter for me at this stage.

Mr. Journeaux, for the supervisory committee, has put forward a letter, dated 29th April, 1994, suggesting that that letter indicated the refusal of the representors, the company, to be reasonable in this matter and that therefore up to that date for other reasons he advanced there should be no order for costs; but

thereafter the boot, so to speak, should be on the other foot, and the supervisory committee should have its costs. I cannot accept that argument. The supervisory committee in that letter in no way admits it was in error and it is not a practical approach, it is not even rational. It is quite clear that, if the Court had found that the contractor's rate was lawful, before any representation could be brought to the supervisory committee there would have to be the co-operation of the parochial assessment committees. It is unrealistic to suppose that that would be forthcoming if their method of raising the assessment had been upheld by the Court. Therefore I cannot accept Mr. Journeaux's argument on that score.

I am therefore quite satisfied that this is a proper case where the representors have succeeded on the main points - the rest is peripheral - and having succeeded on the main points they should be awarded their costs and I am going to do so. The only question remaining is whether and to what extent those costs should be apportioned between the defendants. It is very difficult to apportion them easily; so far as the assessment committees are concerned, each made an error. So far as the supervisory committee is concerned the Court found that its proceedings were irregular and unsatisfactory; and, really, I cannot add to those two adjectives.

There were a number of matters in relation to the failure of the activities of the supervisory committee that gave the Court considerable concern, but it did not think it necessary to go into them in great detail. I can see no reason why they should not pay their full share of the costs. Accordingly I award costs against the first respondent one-third; the second respondent one-third; and the third and fourth respondents one-third.

Authorities

R. -v- Willesden Justices, *ex parte* Utley (1948)
1 KB 193.

Tett -v- States of Jersey & Rent Control Tribunal (1972)
JJ 2249 C.of.A.

J.B. Saunders: "Words and Phrases Legally Defined" (3rd Ed'n):
p.259.

Lipkin Gorman -v- Karpnale Ltd (1989) 1 WLR 1340 @ pp.1389-90.